

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 08, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONALD CRAIG MONSON,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

No. 1:20-cv-03250-SMJ

**ORDER SUMMARILY
DISMISSING HABEAS CORPUS
PETITION**

Petitioner Donald Craig Monson, a prisoner at the Coyote Ridge Corrections Center, filed a *pro se* application for a writ of habeas corpus by a person in State custody under 28 U.S.C. § 2254. ECF No. 1. He paid the \$5.00 filing fee, so his application to proceed *in forma pauperis* is denied as moot. Having reviewed the petition and the record in this matter, the Court is fully informed and dismisses the petition because of several deficiencies briefly summarized below.

PROPER RESPONDENT

The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where

1 the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 893 (9th
2 Cir. 1996). Therefore, only Jeffrey Uttecht is the proper respondent to this action.

3 EXHAUSTION REQUIREMENT

4 Petitioner challenges his 2018 guilty plea to three counts of rape of a child in
5 the second degree in Kittitas County, Washington. ECF No. 1 at 1. He was
6 sentenced to 146 months incarceration. *Id.* Petitioner filed a personal restraint
7 petition, which was denied by the Court of Appeals on February 24, 2020. *Id.* at 2.
8 Although he checks the box stating that he sought further review by a higher court,
9 he again lists the Court of Appeals and indicates review was denied on November
10 30, 2020. *Id.* at 2.

11 Elsewhere, Petitioner indicates that his “prior appeal attempts [were] ruled
12 ‘untimely’” and invites the Court to “see Attachment A-1.” *Id.* at 1. Attachment A-
13 1 is an assertion that “The State of Washington[1] does not have jurisdictional
14 authority[2] to decide on United States Constitution[3] matters, which are outside
15 its jurisdictional or statutory governing limits[4].” ECF No. 1-1 at 2.

16 Before a federal court may grant habeas corpus relief to a state prisoner, the
17 prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
18 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
19 a prisoner give the state courts an opportunity to act on his claims before he presents
20 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A

1 petitioner has not exhausted a claim for relief if they have a right under state law to
2 raise the claim by an available procedure. *See id.*; 28 U.S.C. § 2254(c).

3 To meet the exhaustion requirement, the petitioner must have “fairly
4 present[ed] his claim in each appropriate state court (including a state supreme court
5 with powers of discretionary review), thereby alerting that court to the federal
6 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.
7 364, 365–66 (1995). A petitioner fairly presents a claim to a state court by
8 describing the factual or legal bases for that claim and by alerting the state court “to
9 the fact that the . . . [petitioner is] asserting claims under the United States
10 Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249 F.3d
11 895, 898 (9th Cir. 2001). Mere similarity between a claim raised in a state court and
12 a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513 U.S. at 365–
13 66.

14 Furthermore, to fairly present a claim, the petitioner “must give the state
15 courts one full opportunity to resolve any constitutional issues by invoking one
16 complete round of the State’s established appellate review process.” *O’Sullivan*,
17 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
18 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
19 (1971). It appears from the face of the petition and the attached documents that
20 Petitioner has not exhausted his state court remedies on each of his grounds for

1 relief. *See* ECF No. 1. Indeed, Petitioner affirmatively represents that he did not do
2 so. *Id.* at 12.

3 **GROUND FOR FEDERAL HABEAS CORPUS RELIEF**

4 Throughout the petition, Petitioner invites the Court to “see” his numbered
5 attachments, A-1 to A-25. *Id.* at 5–14. In his first ground for relief, Petitioner asserts
6 that, “Washington State failed to convene a ‘Grand Jury’ to assess the existence of
7 valid forensic evidence.” *Id.* at 5. As further grounds for relief, Petitioner argues
8 that the State of Washington has no jurisdiction to decide federal constitutional
9 matters. ECF No. 1-1 at 2-4.

10 It has long been settled that state courts are competent to decide questions
11 arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898)
12 (“It is the duty of the state court, as much as it is that of the federal courts, when the
13 question of the validity of a state statute is necessarily involved, as being in alleged
14 violation of any provision of the federal constitution, to decide that question, and to
15 hold the law void if it violate that instrument.”); *see also Worldwide Church of God*
16 *v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as
17 competent as federal courts to decide federal constitutional matters). Petitioner’s
18 arguments to the contrary are meritless.

19 Petitioner also asserts that the Washington State Constitution contradicts the
20 U.S. Constitution regarding the Fifth Amendment right to “presentment or

1 indictment of a Grand Jury.” ECF No. 1-1 at 2. He claims “no bill of indictment”
2 was brought against him, rendering his arrest, conviction, and imprisonment illegal.
3 *Id.* Petitioner seems to argue that because the state courts have allegedly defied
4 “federally established procedures and processes for the adjudication of crimes,”
5 only “a court of federal jurisdiction” has jurisdiction over his claims. *Id.*

6 The U.S. Supreme Court has long recognized that, “[p]rosecution by
7 information instead of by indictment is provided for by the laws of Washington.
8 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277
9 U.S. 81, 86 (1928). There is no federal constitutional violation when a prosecuting
10 attorney’s criminal information is substituted for the grand jury’s indictment. *See*
11 *Hurtado v. California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment
12 is essential to due process of law and that a state violates the Fourteenth Amendment
13 by prosecuting a defendant with a criminal information). Petitioner’s assertions to
14 the contrary are legally frivolous.

15 Because it plainly appears from the petition and accompanying documents
16 that Petitioner is not entitled to relief in this Court, **IT IS HEREBY ORDERED:**

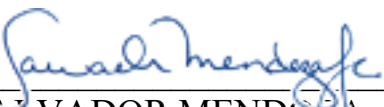
- 17 **1.** The petition, **ECF No. 1**, is **DISMISSED** under Rule 4 of the Rules
18 Governing Section 2254 Cases in the United States District Courts.
- 19 **2.** All pending motions are **DENIED AS MOOT**.
- 20 **3.** The Clerk’s Office is directed to **ENTER JUDGMENT**.

1 **4.** The Clerk's Office is directed to **CLOSE** this file.

2 **5.** The Court certifies that, under 28 U.S.C. § 1915(a)(3), an appeal from
3 this decision could not be taken in good faith and there is no basis upon
4 which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c);
5 Fed. R. App. P. 22(b). A certificate of appealability is therefore
6 **DENIED.**

7 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
8 provide copies to Petitioner.

9 **DATED** this 8th day of January 2021.

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12 SALVADOR MENDOZA, JR.
13 United States District Judge
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